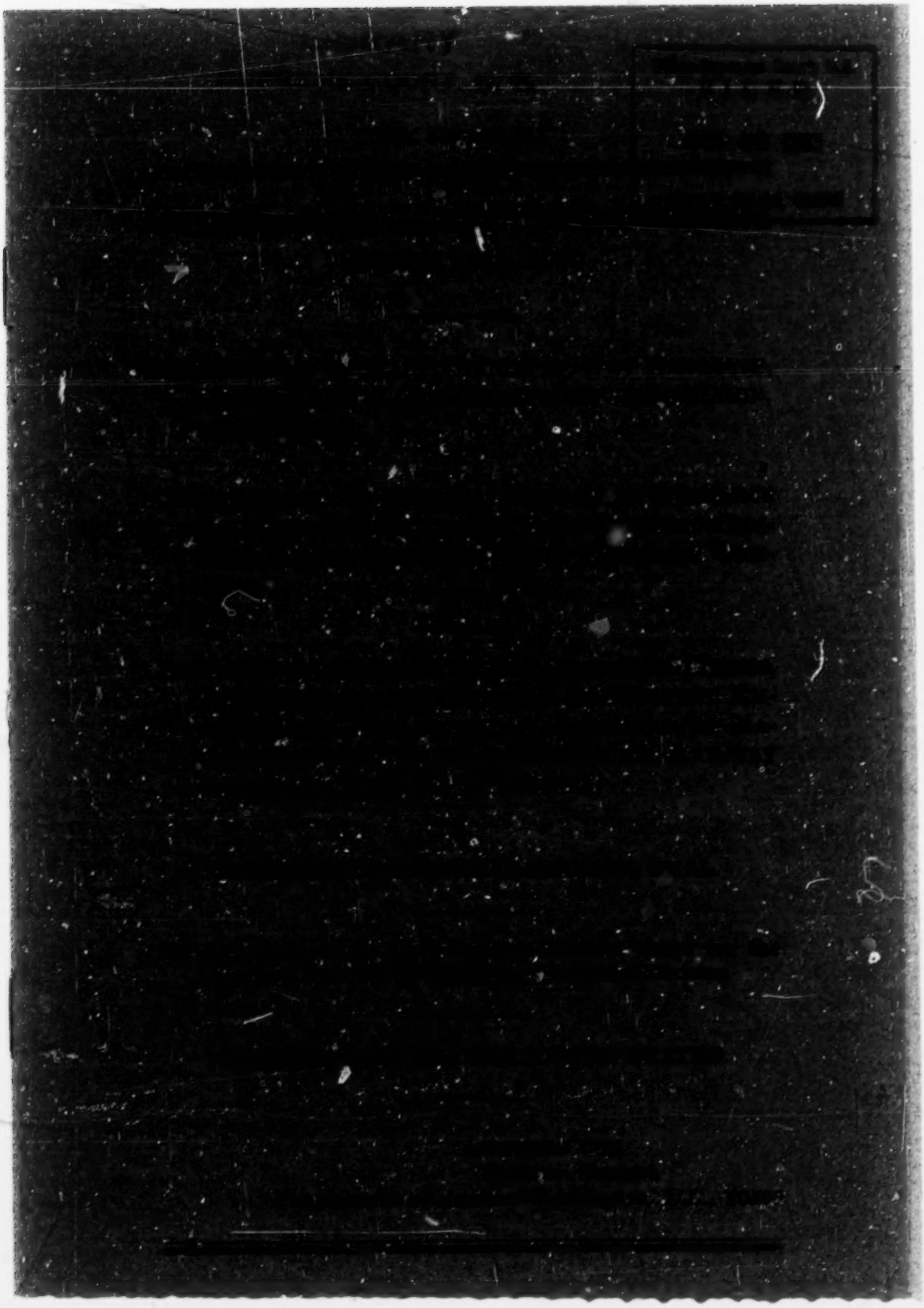

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 510

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES, AND RAILWAY LABOR EXECUTIVES' ASSOCIATION, APPELLANTS

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, BALTIMORE & OHIO RAILROAD COMPANY, and CHESAPEAKE & OHIO RAILWAY COMPANY

No. 511

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES, THE INTERNATIONAL ASSOCIATION OF MACHINISTS, and THE BROTHERHOOD OF RAILWAY CARMEN OF AMERICA, APPELLANTS

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v.

INTERSTATE COMMERCE COMMISSION, ET AL.

On Appeal from the United States District Court for the Eastern District of Michigan, Southern Division

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MEMORANDUM FOR THE UNITED STATES

This case presents two appeals by certain labor organizations from a final judgment and decree of the United States District Court for the Eastern District of Michigan, dismissing complaints which sought to set aside an order of the Interstate Commerce Commission authorizing The Chesapeake & Ohio Railway Company to acquire a controlling stock interest in The Baltimore & Ohio Railroad Company. The United States was named as a defendant below pursuant to the requirement of 28 U.S.C. 2322.

In the court below, the United States supported the appellants herein, asserting that the Commission had not made adequate findings as to the impact of the approval of this control application upon other railroads and upon the structure of the eastern railroad industry. However, we took no position on the ultimate question whether the acquisition of control was "consistent with the public interest" under Sections 5(2) of the Interstate Commerce Act (49 U.S.C. 5(2)(b)).

In his Transportation Message to the Congress on April 5, 1962,[1] President Kennedy directed the formation of an Interagency Committee on Transport Mergers for the purpose of formulating a merger policy for the Executive Branch and considering the merits of each pending transportation merger of significance. This Committee, of which the Assistant Attorney General, Antitrust Division, Department of Justice, is a member, has recently completed a study of the effects of this control transaction and of the

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[1] H. Doc. 384, 87th Cong., 2d Sess., p. 8.

two related pending merger applications involving eastern railroads. As a result of this study, the United States is now of the view that the acquisition of control by the C&O of the B&O would serve the public interest in an improved eastern rail network which would provide economical and efficient transportation services. If this case were to be remanded to the Commission, therefore, the United States would not oppose approval of the transaction.

In light of its conclusions as to the ultimate merits of the merger proposal, the United States has refrained from challenging the order and advises the Court that it no longer seeks a remand of this case to the Commission.

ARCHIBALD COX,
Solicitor General.

OCTOBER 1963

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